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Attorney for Defendant

United States District Court  
Eastern District of Washington  
Before the Hon. Salvador Mendoza, Jr.

United States of America,

Plaintiff,

v.

Monica Pesina,

Defendant.

No. 4:19-CR-06063-SMJ

Reply to Response to Motion to  
Revoke Detention Order

EVIDENTIARY HEARING  
REQUESTED

January 9, 2020 at 10:00 AM  
With oral argument

**A. Summary of Defendant's Motion**

On November 22, 2019, Magistrate Judge Dimke ordered Defendant Pesina's detention pending trial on the grounds that she failed to rebut the presumption of detention. ECF No. 48. Defendant moved for a *de novo* determination of her detention status on December 9, 2019. ECF No. 58. Defendant Pesina seeks

1 release from detention pending trial on the standard and special  
2 conditions set forth in the most recent pretrial services report. ECF  
3 Nos. 46, 58.

4 **B. Summary of Government's Response**

5 The Government responded to the Defendant Pesina's motion on  
6 December 20, 2019. ECF No. 64. The Government's response  
7 proffered facts about the following incidents:

8 a) the June 4, 2019 incident in Pasco, WA involving Defendants  
9 Carter and Pesina (the instant offense);

10 b) the September 27, 2019 incident in Spokane, WA and  
11 Richland, WA involving Defendants Carter and Pesina (the two  
12 residential search warrants incident);

13 c) the October 18, 2019 incident in Spokane, WA involving **only**  
14 Defendant Carter; and

15 d) the November 7, 2019 in Dixie, WA involving Defendants  
16 Carter and Pesina (the arrest incident).

17 *Id.* The Government argues that Pesina has not rebutted the  
18 presumption of detention or, in the alternative, clear and  
19 convincing evidence demonstrates there is no set of conditions that  
20 reasonably assures the public's safety and the preponderance of

1 the evidence demonstrates there are no conditions that reasonably  
2 assure her appearance as required. ECF No. 64 at 14, 17.

3 **C. Defendant's Reply**

4 **1. Defendant Pesina has rebutted the presumption of  
5 detention**

6 Congress created the rebuttable presumption of detention in  
7 serious drug cases to address two issues. First, drug traffickers  
8 “pose a significant risk of pretrial recidivism” because they are  
9 often engaged in a “business” of drug trafficking. S. Rep. No 225,  
10 98th Cong. 1st Sess. 20 (1983). Second, drug traffickers often have  
11 both sufficient financial resources and “substantial ties outside the  
12 United States...to escape to other countries in relative ease...” *Id.*

13 Here, the risk that Defendant Pesina will traffic drugs on pre-trial  
14 release subject to appropriate conditions is non-existent. She will  
15 find gainful employment as required by the conditions of release.  
16 She has been diligently searching for work while incarcerated. She  
17 is eligible for employment services through the Foundational  
18 Community Supports Program from Compass Career Solutions.  
19 Exhibit A. Any (alleged) customers will have found an alternative  
20 source of supply in the intervening two months since her arrest.

1 Thus, her alleged “business” will have substantially deteriorated  
2 and can be financially replaced with her employment. Her brother  
3 is willing to temporarily help her financially until she can find  
4 employment ECF No. 46 at 2.

5 Furthermore, her housing situation in an Oxford house provides  
6 peer support as well as accountability. It is unlikely that she will  
7 be able to hide drug trafficking from her peers in that setting. She  
8 has an incredible amount to lose if she traffics drugs on pretrial  
9 release—not only the revocation of her release and detention, but  
10 additional charges. Lastly, her substance abuse during the  
11 relevant period clouded her judgment. Being drug free for past the  
12 two months since her arrest has cleared her head and her ability  
13 to make rational decisions based on outcomes (such as revocation  
14 of pretrial release) is substantially better.

15 Second, Defendant Pesina has neither risk factor identified by  
16 Congress as leading to an increased risk of flight. She has no  
17 contacts in foreign countries. She is indigent and has no financial  
18 resources. ECF No. 26.

19 For these reasons, Defendant Pesina has produced sufficient  
20 evidence to rebut the presumption of detention.

1           **2. The Government has not disclosed discovery related**  
2           **to the September 2019 incident**

3           Local Criminal Rule 16 required the Government to produce  
4           discovery by November 22, 2019. ECF No. 34; LCrR 16(a). The  
5           Government has produced no discovery related to the September  
6           2019 search warrants in Spokane and Richland. Yet the  
7           Government proffers facts about what was found during the  
8           execution of those warrants. The Court should not rely on the  
9           Government's proffer of facts when the Government failed to  
10          produce the discovery of such facts as required by Local Criminal  
11          Rule 16.

12           **3. The Government's proffer that Defendants Carter and**  
13           **Pesina "laid low" after learning of the federal warrant for**  
14           **their arrest is not supported by reliable evidence.**

15          The Government proffers that

16           Between October 22, 2019 and the date of their arrest  
17           November 8, 2019, the Marshals and the law enforcement  
18           entities involved in the above investigation tried to locate  
19           the Defendant. It was reported to law enforcement, that  
20           the Defendant and CARTER were aware warrants were  
            coming and left the area to law low.

            and

            When faced with the possibility of multiple drug related  
            state arrest warrants, the Defendant left the area to  
            include her children to "lay low."

ECF No. 64 at 10.

The Government does not proffer who reported this accusation to law enforcement, what their past reliability was, or how they obtained this information. The Court should not give this proffer any weight unless the Government offers reliable, credible evidence at the January 9<sup>th</sup> hearing to support its proffer.

**4. The Government's proffer that Defendant Pesina confessed to possessing the methamphetamine inside the house on November 7, 2019 is factually inaccurate.**

Defendant Pesina denies that she made any post-Miranda statements on November 7, 2019. The Government has not produced any discovery to Defendant Pesina that corroborates their proffer. The Court should not give this proffer any weight.

**5. The Government's proffer that the seized pills contain fentanyl is pure speculation.**

The Government appeals to pathos of the Court and argues for detention claiming

The Defendant was also in possession of distribution quantities of Fentanyl laced pills on multiple occasions, the most dangerous and deadly drug in our community.

and

1 ... Defendant was able to re-engage and obtain even more  
2 quantities of narcotics to include deadly Fentanyl laced  
3 pills.

4 ECF No. 64 at 7. Yet the Government's own proffer does not support  
5 this argument.

6 The following items were found inside the shoe box [in the  
7 house in Dixie, WA on November 7, 2019]: ...  
8 approximately 84 blue "M" "30" pills, **suspected** of  
9 containing fentanyl...

10 and

11 During the execution of the search warrant at the Thayer  
12 address [on September 27, 2019], law enforcement  
13 located and seized approximately ... 15 Fake Oxy pills  
14 **believed** to contain Fentanyl ... and indicia belonging to  
15 the Defendant and CARTER.

16 ECF No. 64 at 7, 12 (emphasis added). The Government does not  
17 proffer who suspected/believe these pills contained fentanyl or what  
18 the factual basis for their belief was. The Court should not give any  
19 weight to anonymous suspicions and beliefs.

20 **6. Ms. Samorano is a valuable asset in protecting the  
public upon Defendant Pesina's release**

Defendant Pesina's best friend is Lena Samorano. Ms. Samorano  
was and will always be a drug addict—however, she has been clean  
and sober for over three years. ECF No. 46 at 2. Ms. Samorano  
deeply desires to see her friend get clean and sober and is willing

1 to offer continued support to Defendant Pesina's efforts to get clean  
2 and sober if Defendant Pesina is released. *Id.*

3 The Government argues

4 [H]aving a friend in the community who also has recent  
5 criminal history and is a prior drug user, does not provide  
6 sufficient stability to overcome the Defendant's  
7 aforementioned history and characteristics.

8 ECF No. 64 at 20. Ms. Samorano was charged in the fall of 2015  
9 with two offenses. She pled guilty in May 2016 and was  
10 subsequently sentenced, once in 2016 and once in 2017. The Court  
11 should note that it was being charged with those offenses that  
12 motivated Ms. Samorano to get clean and sober. Defendant Pesina  
13 finds herself in a similar situation here. Defendant Pesina was not  
14 charged in state court for the June 4, 2019 incident, the September  
15 2019 incident, or the November 2019 incident. (Defendant Pesina  
16 was arrested in relation to the September 2019 incident, but the  
17 Spokane County Prosecutor declined charges. See Spokane County  
18 Superior Court, No. 19-1-03683-32, retrievable through  
19 <https://odysseyportal.courts.wa.gov/ODYPORTAL/Home/Dashb>  
20 [oard/29](https://odysseyportal.courts.wa.gov/ODYPORTAL/Home/Dashboard/29) (last accessed December 23, 2019)).



1 The scientific literature defines “peer support” as “[t]he process  
2 of giving and receiving nonprofessional, nonclinical assistance  
3 from individuals with similar conditions or circumstances to  
4 achieve long-term recovery from psychiatric, alcohol, and/or other  
5 drug-related problems.” Kathlene Tracy & Samantha Wallace,  
6 *Benefits of peer support groups in the treatment of addiction*, 2016:7  
7 SUBSTANCE ABUSE AND REHABILITATION 143, 144 (2016). Peer support  
8 has been shown to reduce drug and alcohol usage as well as  
9 improved engagement with substance abuse treatment. *Id.* at 147-  
10 50. Here, Ms. Samorano’s peer support makes it much more likely  
11 that Defendant Pesina will remain clean and sober if released.

12 **7. Defendant Pesina’s failure to appear for a**  
13 **misdemeanor arraignment during a one-month period is**  
14 **not relevant**

15 Defendant Pesina was charged with failure to transfer title within  
16 45 days in Benton County District Court on about October 17,  
17 2017. ECF No. 22. She was summoned to appear for an  
18 arraignment on November 3, 2017 and December 1, 2017. *Id.*  
19 However, these summons are typically mailed to the address on  
20 record with the Department of Licensing, which does not guarantee  
actual notice. Her failure to appear was not the result of a

conscious choice, but rather lack of notice. The Court should not give these failures to appear any weight.

**8. The Government's proffer that Defendant Pesina did not comply with instructions to leave the Dixie residence is misleading**

On November 7, 2019, officers called Defendant Pesina out of the residence in Dixie, WA. ECF NO. 64 at 11. She exited the residence approximately 45 seconds later. Forty-five seconds is not a willful delay of compliance, but rather a reasonable amount of time for a person to assess a dynamic situation.

**9. The Government's proffer substantially overstates Defendant Pesina's recidivism following law enforcement contact and her involvement with firearms**

The Government argues that Defendant Pesina

continued to engage in serious criminal behavior even after law enforcement intervention. On each occasion, substantial quantities of narcotics and firearms were seized from the Defendant. Yet, after bonding out on those state arrests, the Defendant was able to re-engage and obtain even more quantities of narcotics to include deadly Fentanyl laced pills.

ECF No. 64 at 18. The Government's argument, if factually accurate, would be persuasive. But it is not factually accurate.

First, in the June 2019 incident, Defendant Pesina was not arrested or charged. No firearms were seized from her.

1 Second, after the September 2019 incident, Defendant Pesina  
2 was arrested in Spokane County, but not charged. No firearms  
3 were seized in Spokane County. She was not arrested or charged  
4 in Benton County Superior Court. An unknown number of firearms  
5 were found in the Richland residence, but the Government gives  
6 no indication of whom they might belong to, Defendant Pesina or  
7 co-defendant Carter or a third-party. ECF No. 64 at 7. The  
8 Government has produced no discovery related to the September  
9 2019 incident.

10 Third, in the October 2019 incident, Defendant Pesina was not  
11 present or involved.

12 Fourth, in the November 2019 incident, officers located a two  
13 9mm pistols in a spare bedroom. ECF No. 64 at 11. They also found  
14 materials in that bedroom indicating the firearms belonged to co-  
15 defendant Carter. *Id.* In the living room where law enforcement  
16 suspected Defendant Pesina was prior to exiting the residence, they  
17 found no firearms. *Id.*

18 In essence, the Government argues that the September and  
19 November incidents demonstrate that law enforcement contact is  
20 insufficient to deter Defendant Pesina. However, federal pretrial

1 release in the instant case will be substantially more involved than  
2 her brief June 2019 contact with law enforcement or her  
3 September 2019 arrest followed by one week on conditions of  
4 release. She will be subject to stringent conditions of release  
5 including weekly contact with the pretrial services office, frequent  
6 urinalysis testing, substance abuse treatment (expected to be three  
7 sessions a week), full time employment and residing in a clean and  
8 sober living facility. Active and frequent supervision with additional  
9 checks by her substance abuse treatment providers, her fellow  
10 residents in the Oxford house, and her friend Ms. Samorano all  
11 reasonably assure the Court that Defendant Pesina does not pose  
12 a danger to the public and will appear as required.

13 **D. Conclusion**

14 For these reasons, Defendant Pesina respectfully asks the Court  
15 to grant her pretrial release on the conditions suggested in the  
16 pretrial services report.

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18 ///

19 //

20 /

1 Dated: December 27, 2019

Respectfully Submitted,

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SERVICE CERTIFICATE

I certify that December 27, 2019, I electronically filed the foregoing with the District Court Clerk using the CM/ECF System, which will send notification of such filing to the following:

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